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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,974	09/26/2003	Mark S. Shaskey SR.	SHASKEY-PA-1	8867

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EXAMINER

KRAMER, DEAN J

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,974

Applicant(s)

SHASKEY, MARK S.

Examiner

Dean J. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The amendment filed 6/16/05 and the remarks presented therewith have been carefully considered. However, they are not deemed to be fully persuasive.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Cowles.

Cowles shows a holding apparatus that contains all of the structural limitations as broadly as recited in the above claims of the instant application. It is pointed out that “soft drink” bottles come in various shapes and sizes, and the Cowles holder is deemed *capable* of conforming to a soft drink bottle that is the same general size of the bottle (A) shown in Figures 1 and 2 of the Cowles patent.

3. Claims 1, 2, 4, 7, 8, and 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Bohne et al..

The patent to Bohne et al. shows upper and lower cylindrical sections (104), a plurality of struts (106,116), and a handle (108) having transverse ribs (110) wherein each of the struts (106) have outwardly directed opposing ribs for increasing the

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structural support of the holder (see col. 3, lines 51-53). The Bohne et al. holder is deemed capable of conforming to and supporting a relatively large "soft drink" bottle, such as a three liter bottle of soda, as long as this bottle was of a similar diameter to that of a standard paint can.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 6, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohne et al. in view of Holub et al..

The Holub et al. patent shows a pair of cylindrical sections (13,14). The lower section (14) is slightly smaller in diameter than the upper section and has slightly tapered sidewalls (see col. 3, lines 1-7) for securely engaging the outer surface of the base of a bottle or the like.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to at least slight taper the bottom cylindrical section of the Bohne et al. holder as taught by Holub et al. in order to create a more secure grip on the base of the container being held.

In regard to applicant's argument that claim 5 is limited to "soft drink" bottles, it is pointed out that the claims of the instant application are directed to *a holding apparatus* for use with a soft drink bottle. In other words, the "soft drink bottle" recited in the claims

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is only construed as an article of intended use with the holding apparatus. Regarding claims 15 and 16, the resulting modified Bohne et al. holder would be capable of supporting various sized bottles, e.g. two liter, three liter, depending on the diameters thereof.

In response to applicant's argument that the Bohne et al. patent and the Holub et al. patent are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both of these references disclose holders for supporting and carrying containers that do not normally have a rigid handle attached to a side surface thereof.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohne et al. in view of Kennedy.

Kennedy shows a bottle holding apparatus "made of plastic material, which can be molded or manufactured by any known plastic manufacturing process." (col. 3, lines 64-66).

It would have been obvious to a person having ordinary skill in the art to mold, bond, or otherwise manufacture the plastic Bohne et al. holder as taught by Kennedy as an inexpensive means of making a durable plastic product.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohne et al. in view of Waters.

Waters shows a container holding device formed of metal cylindrical bands (a,b,c) and metal struts (d) riveted together during the assembly thereof.

It would have been obvious to one of ordinary skill in the art to form the cylindrical sections and struts of the Bohne et al. apparatus out of metallic materials attached together through rivets as taught by Waters as an alternative yet functionally equivalent means of manufacturing a holder that would be stronger and more durable than a plastic device.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohne et al. in view of Kochan.

Kochan discloses it old and well known to provide advertising (24) on a bottle holder to promote a message to the consumer (see col. 4, lines 8-11).

It would have been obvious to a person having ordinary skill in the art to provide an advertisement on either or both of the Bohne et al. cylindrical sections as taught by Kochan as an effective means of promoting a message to a consumer.

9. Claims 1, 4, 5, 6, 7, 9, 10, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Didion (2,961,112) in view of McCrumb (6,378,924).

Didion shows a holding apparatus that contains all of the structural elements as set forth in the above claims except its upper (4) and lower (5) sections are not cylindrical.

McCrumb shows a plastic-molded, cylindrical-shaped bottle support for conforming to the outer surface of a generally cylindrical bottle.

It would have been obvious to a person having ordinary skill in the art to form the upper and lower sections (4,5) of Didion's holder into generally cylindrical shapes as taught by McCrumb in order to better handle cylindrical bottles, such as two liter soda bottles, three liter soda bottles, or cylindrical juice bottles, that do not already have a handle formed thereon. Regarding claim 5, McCrumb's lower end is slightly tapered as best shown in Figure 5.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (571) 272-6926. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6/28/05
Dean J. Kramer
Primary Examiner
Art Unit 3652

djk
6/28/05